COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

COMPLAINT OF CTC COMMUNICATIONS CORP. CONCERNING REFUSAL BY VERIZON MASSACHUSETTS TO PROVIDE UNBUNDLED NETWORK ELEMENTS AT TARIFFED RATES	)	DTE NO. 04-___

ANSWER OF
VERIZON MASSACHUSETTS

Pursuant to 220 CMR §1.04(2), Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon MA") files this Answer to the Complaint of CTC Communications Corp. ("CTC") dated September 24, 2004.

I. INTRODUCTION AND SUMMARY

CTC's Complaint seeks an order requiring Verizon MA to continue to provide CTC with unbundled enterprise switching, which includes local circuit switching subject to the Federal Communications Commission's ("FCC") Four-Line Carve-Out Rule or provided using DS1 or higher capacity loops, at TELRIC rates pursuant to Verizon MA's Tariff DTE No. 17 ("the Tariff"). CTC, however, has no right to purchase enterprise switching under the Tariff. CTC's right to local switching is defined and governed solely by its interconnection agreement with Verizon MA dated July 14, 2000 ("the ICA"), the terms of which take precedence over the Tariff. Under the ICA, CTC no longer has a right to enterprise switching because the FCC has determined that such switching is not a network element that must be unbundled under Section 251(c)(3) of the Telecom Act, and the ICA expressly limits Verizon MA's unbundling obligation

to the FCC's requirements. Accordingly, Verizon MA is free to discontinue access to enterprise switching as an unbundled element at TELRIC rates.

In addition, CTC also seeks an order prohibiting Verizon MA from charging CTC just and reasonable resale equivalent rates for such switching when purchased in combination with the network elements that formerly comprised a UNE-P arrangement, until and unless the Department approves tariff changes effectuating the resale-equivalent surcharges. CTC also asks the Department to require Verizon MA to credit CTC for any surcharges already billed and to prohibit Verizon MA from taking action against CTC for failing to pay the surcharges. CTC is not entitled to any of this relief either.

Verizon MA's only obligation with respect to enterprise switching arises under Section 271 of the Telecom Act. As the Department has previously ruled, Verizon MA's rates for network elements that it is required to provide to CLECs solely pursuant to Section 271 of the Telecom Act, such as the switching element at issue here, are subject to the exclusive jurisdiction of the FCC and are outside the scope of the Department's authority. In any event, the surcharges Verizon MA has imposed on CTC merely raise its fees for former enterprise UNE-P arrangements up to Verizon MA's resale rates, based on the retail discount that has been approved by the Department. *See* DTE MA Tariff No. 14, Section 10.5, at 5. CTC has offered no grounds for requiring Verizon MA to obtain re-approval of that discount.

A. Background

In the *Triennial Review Order*, the FCC found that CLECs are not impaired without access to unbundled local circuit switching or associated unbundled shared transport, used to serve enterprise customers, including "customers taking a sufficient number of multiple DS0 loops," as well as those served "over one or several DS1s." *TRO* ¶ 497. The FCC reaffirmed

that in "density zone 1 of the top 50 MSAs" (Metropolitan Statistical Areas), the proper dividing line between mass-market and enterprise customers "will be four lines," and, therefore, retained the "four-line carve-out" it first adopted in its 1999 UNE Remand Order. *Id*. ¶¶ 497, 525. The FCC promulgated regulations declaring that "an incumbent LEC *shall comply* with the four-line 'carve-out' for unbundled switching established in" the *UNE Remand Order*. 47 C.F.R. § 51.319(d)(3)(ii) (emphasis added).

In order to effectuate the *TRO* rulings, Verizon MA sent letters to its CLEC UNE customers in the state, including CTC, on May 18, 2004, providing more than 90 days' notice that, as of August 22, 2004, Verizon MA would no longer provide enterprise switching or associated, unbundled shared transport as UNEs under Section 251. *See* letters from Jeffrey A. Masoner of Verizon to Edward W. Kirsch dated May 18, 2004, attached to the Complaint as Exhibits 1 and 3. Those letters provided CTC with far more notice of the discontinuance of these UNEs than CTC is entitled to under the ICA, which does not provide for *any* advance notice. *See* Section 1.1 of the UNE Remand Attachment to Amendment 1 of the ICA.[1]

Verizon's May 18 letters also advised CTC that, although the switching UNEs eliminated by the FCC would no longer be available, Verizon would continue to make the same switching services available on a resale basis. Verizon also offered to negotiate alternative service arrangements that might be more advantageous to CTC than resale and asked CTC to contact Verizon to initiate such negotiations, if not already in progress. Verizon stated that if CTC failed to migrate its enterprise switching UNE-P arrangements to alternative services by August 22, 2004, Verizon would begin billing those arrangements "at a rate equivalent to the Section 251(c)(4) resale rate for business service … to avoid service disruption." Finally, Verizon

[1] Excerpts from the ICA and Amendment No. 1 cited in this Answer are attached hereto.

reminded CTC that if it prefers not to pay resale-equivalent rates, it could terminate its enterprise switching provided by Verizon. In follow-up letters, Verizon provided CTC with the actual amounts that would be assessed as surcharges and a list of the central offices affected by the four-line carve-out rule. *See* letters from Masoner to Kirsch dated July 2, 2004, Exhibits 2 and 4 to the Complaint. Verizon again reminded CTC of Verizon's willingness to negotiate commercial arrangements for substitute switching services.

There followed a series of letters between the parties in which CTC asserted that the ICA prohibits Verizon from discontinuing enterprise UNE-P and Verizon refuted CTC's assertion. *See* Complaint Exhibits 5-8. In none of its letters did CTC claim that it was entitled to purchase enterprise switching from Verizon MA's tariffs, or that the terms of the Tariff controlled over those of the ICA. For its part, Verizon reminded CTC that in the absence of alternate arrangements, Verizon would begin billing CTC "at a rate equivalent to the Section 251(c)(4) resale rate for business service." Verizon also explained that its resale rates had already been approved by the Department, and that no further approval was required. *See* Exhibits 6 and 8 to the Complaint.

The parties attempted to reach a commercial agreement for substitute switching services without success. Despite the ample notice Verizon provided to CTC, CTC failed to migrate its enterprise UNE-P arrangements to resale or to alternative services, nor did it seek to terminate those arrangements. Accordingly, as of August 23, 2004, Verizon MA began providing such arrangements to CTC as resold lines at rates equivalent to Verizon MA's resale rates for business service. CTC has brought this proceeding in order to avoid paying those lawful charges.

B. <u>CTC Cannot Purchase Enterprise Switching From the Tariff.</u>

CTC's Complaint and its specific claims for relief depend entirely on CTC's assumption that Verizon MA is required to sell CTC enterprise UNE-P under Verizon MA's DTE MA Tariff

No. 17. The opening paragraph of the Complaint, for example, asks the Department to order Verizon MA "to continue to provide [such UNE-P] on existing rates and terms reflected in [Verizon MA's] UNE tariffs unless and until" the Department approves charges to the Tariff. The crux of the Complaint is CTC's assertion that because the Department has suspended Verizon MA's proposal to eliminate enterprise switching from the Tariff, "…CLECs may continue to obtain enterprise UNE-P and four line UNE-P and related services pursuant to this Department-approved and effective tariff." Complaint, ¶14.

The premise of CTC's Complaint is incorrect as a matter of law. CTC is not now, and never has been, entitled to purchase local switching UNEs out of the Tariff. Rather, under the Department's Order in DTE 98-57, Phase I, CTC's access to local switching is governed solely by the terms of its ICA, which control over the terms of the Tariff.

In DTE 98-57, the Department clearly defined the relationship between tariffs and interconnection agreements in Massachusetts, finding that interconnection agreements – not the Tariff – govern Verizon MA's provision of interconnection services, unless otherwise specified by the parties. DTE 98-57, Phase I, Order at 21-22, 23. (March 24, 2000). In that proceeding, to which CTC was a party, CLECs proposed that:

> Tariff No. 17 should be construed as a supplement to interconnection agreements from which carriers may choose to purchase items not provided for in their interconnection agreements.… The CLECs further urge the Department to find that tariff provisions never supercede provisions in interconnection agreements unless the agreement explicitly provides that an applicable tariff will control the terms of the offering.

Order, at 16, citations omitted. The Department agreed, holding that:

> In order to promote fair competition by ensuring that all carriers retain the benefits of their bargains, and to further the preference for negotiated agreements expressed in the Act, *the Department holds that tariff provisions, whether derived from arbitration or Department investigations, will not supercede corresponding arbitrated or negotiated*

> *provisions in interconnection agreements*.… Tariff provisions will be applicable to interconnection agreements only where the parties to the agreement have explicitly provided in the agreement that an applicable tariff shall control the terms of the offering.

Id. at 21-22 (emphasis added); *see also id*. at 23 (stating that "[T]he Department has revised its policy on the effects of tariffs on interconnection agreements to prevent a tariff from trumping interconnection agreements and to preserve the finality of contracts.") As a corollary, the Department also held that a carrier may not purchase services from the Tariff if those services are addressed in an interconnection agreement: "…Tariff No. 17 represents a supplement to interconnection agreements from which carriers may choose to purchase services not addressed in their interconnection agreements." *Id*. at 24.

The Department's ruling in D.T.E. 98-57 controls this case. CTC does not dispute that it is a party to an interconnection agreement with Verizon MA or that the ICA governs access to UNEs and specifically local switching network elements. The ICA states that: "This Agreement, including all Parts, Sections, Attachment and Annexes, specifies the rights and obligation of each Party with respect to the purchase and sale of Local Interconnection, Local Resale, Network Elements … and any other services set forth herein." Part A, Section 3 of the ICA, attached hereto; *see also* Attachment III, Section 7, also attached.

Because CTC is a party to an ICA that unequivocally addresses access to local switching network elements, CTC's rights to purchase such services are governed exclusively by the ICA, not by the Tariff. CTC cannot circumvent the contractual restrictions on its access rights by now claiming a right to purchase switching UNEs out of the Tariff, and CTC is not entitled to an order requiring Verizon MA to sell it such service either on a stand-alone basis or as part of a UNE-P arrangement.

CTC apparently relies on a tariff theory because it recognizes that its ICA allows Verizon MA to terminate services once Verizon MA has no legal obligation to provide them. In this regard, Section 1.1 of the UNE Remand Attachment to Amendment No. 1 to the ICA provides that:

> Verizon shall be obligated to provide unbundled Network Elements (UNEs) and Combinations to CTC only to the extent required by Applicable Law and may decline to provide UNEs or Combinations to CTC to the extent that provision of such UNEs or Combinations is not required by Applicable Law.[2]

See also, UNE Remand Attachment, Section 1.5 (providing that, "if Verizon provides a UNE or Combination to CTC, and the Commission, the FCC, a court or other governmental body of appropriate jurisdiction determines or has determined that Verizon is not required by Applicable Law to provide such UNE or Combination, Verizon may terminate its provision of such UNE or Combination to CTC."); and ICA §2.2. As a result of the FCC's *TRO* findings that CLECs are not impaired without unbundled access to enterprise switching and the associated FCC Rules (47 CFR §§ 51.319(d)(3) and 51.319(d)(3)(ii)), Applicable Law no longer requires Verizon MA to provide such access.[3] Accordingly, the ICA authorizes Verizon MA to "decline to provide" and "terminate its provision" of enterprise switching UNEs at this time, and CTC no longer has a right to purchase such UNEs. Under the Department's holding in DTE 98-57, Phase I, the terms of the ICA eliminating Verizon MA's former obligation to provide these UNEs trump and supercede

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[2] Amendment No. 1 also provides that "the terms and conditions set forth in the UNE Remand Attachment and the Pricing Appendix to the UNE Remand Attachment attached hereto shall govern Verizon's provision of Network Elements to CTC," Amendment No. 1, §1, and that "In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Terms [of the ICA], this Amendment shall govern…." *Id.* §2. Thus, even if the *TRO* constituted a change of law requiring the parties to negotiate an amendment to the ICA under ICA Section 8 (which it does not), and even if that obligation were held to conflict with Verizon MA's rights to discontinue the UNEs at issue here under Amendment No. 1 and the UNE Remand Attachment, the terms of the Amendment would control over those of Section 8.

[3] Verizon MA and some CLECs have argued in other proceedings as to whether the contract term "Applicable Law" encompasses Section 271 of the Act. That issue is not material here, however, where CTC has not, and

any tariff terms which might otherwise require Verizon MA to provision them. Moreover, requiring Verizon MA to provision these UNEs despite the express terms of the contract would defeat the public policies underlying the Department's holding in DTE 98-57. Nothing would more surely deprive Verizon MA of the benefits of its bargain or raise more serious questions as to the finality of carriers' interconnection agreements.

C. Verizon MA May Charge CTC Its Resale Equivalent Rates For Enterprise Switching Without Further Department Approval.

In its letters of May 18, 2004, Verizon advised CTC that unbundled enterprise switching would no longer be available as of August 22, 2004, but that the same services would still be available as resale services and that Verizon was willing to negotiate a commercial agreement for even more advantageous terms for such services. The letters also gave CTC more than three months warning that if it failed to migrate its enterprise UNE-P arrangements to alternative service by August 22, 2004, Verizon would begin billing those arrangements "at a rate equivalent to the Section 251(c)(4) resale rate for business service … to avoid service disruption."[4] Verizon provided CTC with the amounts of the applicable surcharges in its letters of July 2, 2004.

CTC devotes a great deal of its Complaint to arguing that state law and Section 251 of the Act preclude Verizon MA from charging the new rates until they are specifically approved by

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cannot, allege that Section 271 requires Verizon MA to provide enterprise UNE-P at the TELRIC rates provided in the Tariff.

[4] The rates for CTC's former enterprise UNE-P arrangements are "equivalent" to resale rates because Verizon MA continues to serve the CTC arrangements on the UNE-P platform and has not technically converted the lines to resale accounts. Converting the arrangement to resale accounts would entail the placement of orders by CTC to disconnect the individual UNEs comprising UNE-P and to establish service as a resale account. Conversion would also involve a number of operational steps such as removing CLEC-designated line class codes and routing tables on the UNE-P arrangements. Since CTC has refused to actually convert the lines to resold services or taken any other action, Verizon MA has no choice – because it does not wish service to the end user to be affected – but to retain the existing serving arrangements and charge as though they were resale accounts.

the Department. *See* Complaint, at 8-9 and 11-15. CTC's claim is fatally flawed in at least three ways.

First, as demonstrated above, Verizon MA has no obligation to provision enterprise switching as a UNE under Section 251 of the Act, the Tariff or the parties' ICA. Any obligation Verizon MA may have to provision enterprise switching arises solely from Section 271 of the Act.[5] CTC, however, has not entered into any agreement with Verizon MA to provide Section 271 services, nor has CTC asked Verizon MA to convert its former UNE-P arrangements to resale. As a result, Verizon MA currently has no legal obligation to provide enterprise switching to CTC in any form. Verizon MA continues to provide enterprise switching, combined with other network elements, to CTC only out of courtesy to CTC and its customers and in the public interest of avoiding disruption. Thus, if Verizon MA were not allowed to charge its resale equivalent rates for such services without prior Department approval, Verizon MA would remain free simply to withdraw those services.

Second, because Verizon MA's obligation to provide enterprise switching arises, if at all, solely from Section 271 and not from Section 251, only the FCC has authority to approve Verizon MA's rates for those services. Contrary to CTC's state law arguments, the Department has no jurisdiction to review pricing for Section 271 services. Section 271(d)(6) explicitly grants exclusive enforcement authority to the FCC to ensure that Verizon MA continues to comply with the market-opening requirements of Section 271. As stated by the FCC, "Whether a particular checklist element's rate satisfies the just and reasonable pricing standard of section 201 and 202 is a fact-specific inquiry that *the Commission* [*i.e.*, the FCC] will undertake in the context of a

[5] Section 271 does not require Verizon MA to provide enterprise switching in combination with any other network element. Thus, charges that might be appropriate for stand-alone enterprise switching purchased under Section 271 would likely understate the value of such service, and the appropriate rates, when it is provided in combination with loops and other elements, as in a resale situation.

BOC's application for section 271 authority or in an enforcement proceeding brought pursuant to section 271(d)(6)." *TRO*, ¶ 664 (emphasis added); *see also id*., ¶ 665. Indeed, the Department in D.T.E. 03-59 recognized that it "does not have jurisdiction to enforce Verizon's unbundling obligations pursuant to Section 271. See 47 U.S.C. § 271(d)(6). The proper forum for enforcing Verizon's Section 271 obligations is before the FCC." D.T.E. 03-59, *Order* at 19 (November 25, 2003). Accordingly, the Department has no authority to review the rates Verizon MA is charging for enterprise switching, and cannot grant CTC any of the relief it seeks.

Finally, even if the Department had authority to review Verizon MA's rates for the services at issue here, there is no need for such a review, because the surcharges to be applied to CTC's bill for its former enterprise UNE-P arrangements only bring the total charges up to the level of Verizon MA's resale rates for similar arrangements. Those rates are calculated from Verizon MA's approved retail rates using the retail discount approved by the Department, as found at DTE MA Tariff No. 14, Section 10.5, at 5. Thus, Verizon MA's rates for CTC's former enterprise UNE-P arrangements are no greater than the rates CTC would incur if it converted those services to resale. Accordingly, even if the rates at issue were subject to Department review (and they are not), they would meet the Department's "just and reasonable" standard. At any rate, the fact that the particular services at issue here were once provided as UNE-P arrangements offers no basis for requiring Verizon MA to submit its resale rates for those services for Departmental approval.

II. VERIZON MA'S ANSWERS TO THE NUMBERED PARAGRAPHS OF THE COMPLAINT

Verizon MA responds to the numbered paragraphs of the Complaint as follows:

1. Verizon MA lacks sufficient information either to admit or deny the allegations contained in paragraph 1 of the Complaint.

2. Verizon MA admits that CTC purchases unbundled network elements from Verizon MA. Verizon MA lacks sufficient information either to admit or deny the remaining allegations contained in paragraph 2 of the Complaint.

3. Admitted.

4. Admitted. Further answering, Verizon MA states that it also provides services not pursuant to tariff, such as the switching services it formerly provided to CTC pursuant to its ICA.

5. Denied. Further answering, Verizon MA states that the Department does not have jurisdiction to determine the propriety of the rates Verizon MA charges CTC for the enterprise switching services at issue here.

6. Verizon MA admits that CTC formerly purchased UNE-P from Verizon MA. Verizon MA denies that CTC currently purchases enterprise UNE-P. Verizon MA lacks sufficient information either to admit or deny the remaining allegations contained in paragraph 6 of the Complaint.

7. Verizon MA admits that its Tariff DTE No. 17 sets forth rates, terms and conditions for unbundled network elements but denies that it offers local switching UNEs to CTC pursuant to that tariff.

8. Verizon MA admits that it sent CTC a letter on or about May 18, 2004 and further answers that such letter speaks for itself. Verizon MA further admits that it informed CTC in May of 2004 that it would continue to make enterprise switching available on a resale basis as of August 22, 2004, and that it intended to charge CTC for such service at a rate equivalent to Verizon MA's resale rates for business service.

9. Verizon MA admits that it sent CTC a letter on or about July 2, 2004. Further answering, Verizon MA states that such letter speaks for itself. Verizon MA further admits that it intended to charge CTC for enterprise UNE-P at a rate equivalent to Verizon MA's resale rates for business service.

10. Verizon MA admits that it sent CTC a letter on or about May 18, 2004 and further answers that such letter speaks for itself. Verizon MA further admits that it informed CTC in May of 2004 that it would continue to make former four-line carve-out switching available on a resale basis as of August 22, 2004 and that it intended to charge CTC for such service at a rate equivalent to Verizon MA's resale rates for business service.

11. Verizon MA admits that it filed amendments to DTE MA Tariff No. 17 on or about June 13, 2004. Further answering, Verizon MA states that those amendments and the transmittal letter speak for themselves.

12. Verizon MA admits that on or about July 2, 2004, it sent CTC a letter with additional information regarding the impending rate increase for four-line carve-out switching and attendant services. Further answering, Verizon MA states that such letter speaks for itself. In response to CTC's claim that such rate increase "would necessarily be passed onto small businesses and other customers in Massachusetts," Verizon MA states that whether CTC passes the rate increase on to its customers is entirely within the discretion of CTC.

13. Verizon MA admits that the Department has suspended Verizon MA's amendments to Tariff DTE MA No. 17 filed in June of 2004.

14. Denied. Verizon MA admits that Tariff DTE MA No. 17 remains in effect as it was on June 23, 2004. Verizon MA also admits that there may be some CLECs who do not have

interconnection agreements with Verizon MA or whose interconnection agreements do not address access to local switching network elements, and that any such CLECs may obtain enterprise UNE-P pursuant to the Tariff. CTC, however, is a party to an interconnection agreement with Verizon MA that expressly addresses local switching. Pursuant to the Department's ruling in DTE 98-57, Phase I, the terms of CTC's ICA concerning local switching control over the provisions of the Tariff, and CTC has no right to purchase enterprise switching from the Tariff.

In response to footnote 16 of the Complaint, Verizon MA denies that it has any obligation to provide enterprise switching as a UNE pursuant to the *Bell Atlantic/GTE Merger Order*. As an initial matter, the Department need not rule on CTC's argument about the merger conditions here. The FCC has made clear that enforcement of the merger conditions is the FCC's responsibility, not this Department's: "If Bell Atlantic/GTE does not ... perform each of the conditions, ... *we must take action* to ensure that the merger remains beneficial to the public." *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd 14331, ¶ 256 (2000) (emphasis added). Other state commissions have correctly recognized that interpretation and enforcement of the merger conditions is a matter for the FCC. *See*, *e.g.*, Examiner's Report, *Verizon Maine Petition for Consolidated Arbitration*, Docket No. 2004-135, at 10-11 (Me. PUC filed May 6, 2004).

CTC's argument is wrong, in any event. To the extent that the merger conditions imposed an independent obligation upon Verizon to provide UNEs, that obligation expired of its own force in July 2003, 36 months after the merger closed, pursuant to the *Merger Order*'s sunset provision. *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd 14331, ¶ 64 (2000). As a Rhode Island

arbitrator observed, "[t]he sun has set on VZ's obligation to provide UNEs under the Bell Atlantic/GTE Merger Order."[6]

Even if the merger condition had not sunset already, it would have ceased to be effective under its own terms, which limited its lifespan to "the date of any final and non-appealable judicial decision that determines that Bell Atlantic/GTE is not required to provide the UNE or combination of UNEs in all or a portion of its operating territory." *Merger Order*, at 14180, ¶ 316. The FCC further stated that "[t]he provisions of this Paragraph shall become null and void and impose no further obligation on Bell Atlantic/GTE after the effective date of final and non-appealable [FCC] orders in the *UNE Remand* and *Line Sharing* proceedings, respectively." *Id*. at 14316, App. D, ¶ 39.

As recognized by the FCC, both the *UNE Remand Order* and the *Line Sharing Order* were struck down by the D.C. Circuit's decision in *United States v. Telecom Ass'n. v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*"). As of March 24, 2003, when certiorari was denied, *USTA I* constitutes a final and non-appealable judicial decision that the prior UNE rules had no force and effect. *See Worldcom, Inc. v. U.S. Telecom Ass'n*, 538 U.S. 940 (2003) (denying certiorari). Moreover, the FCC held in the *TRO* that "once the *USTA* decision is final and no longer subject to further review, or the new rules adopted in this Order become effective, *the legal obligation upon which the existing interconnection agreements are based will no longer exist*." *TRO*, ¶ 705 (emphasis added). The FCC further stated that it would be "unreasonable and contrary to public policy to preserve our prior rules for months or even years pending any reconsideration or appeal of this Order." *Id.* Indeed, the FCC emphasized that *any* delay in implementing the *Triennial Review Order* would "have an adverse impact on investment and

[6] *Petition of Verizon-Rhode Island for Arbitration of an Amendment to Interconnection Agreements*, Procedural Arbitration Decision, Docket No. 3588, at 13 (April 9, 2004).

sustainable competition in the telecommunications industry." *Id.*, ¶ 703. It defies common sense to argue (as CTC does) that the FCC intended to retain investment-dampening, anticompetitive rules for Verizon, the largest RBOC.

15. In response to the first, third and last sentences of paragraph 15 of the Complaint, Verizon MA admits that it received a letter from CTC dated August 18, 2004, and that it responded by letter dated August 19, 2004, and states that those letters as well as the parties' ICA speak for themselves.

Verizon MA denies the presumption underlying the second sentence of paragraph 15; Verizon MA does not seek to change the ICA – "unilaterally" or otherwise. As demonstrated above, the ICA as currently written authorizes Verizon MA to terminate and decline to provision enterprise switching as a UNE pursuant to Sections 1.1 and 1.5 of the UNE Remand Attachment now that Verizon MA's legal obligation to do so has ended. Verizon MA also denies that any amendment is needed in order to conform the ICA to the current FCC rules permitting Verizon MA to cease providing unbundled enterprise switching. In any event, even if the change of law provisions of Section 8 of the ICA applied here (and they do not), the obligation to negotiate an amendment to the ICA would not prevent Verizon MA from exercising its rights expressly granted in Amendment No. 1 to terminate and decline to provision UNEs, such as enterprise switching, no longer required by Applicable Law. In fact, such a reading is precluded by the parties' express agreement that, "In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Terms [of the ICA], *this Amendment shall govern*…." ICA Amendment No. 1, §2, attached hereto.

16. Verizon MA admits that it received a letter from CTC dated September 3, 2004. Further answering, Verizon MA states that such letter speaks for itself.

17. Verizon MA admits that it sent CTC a letter dated September 17, 2004. Further answering, Verizon MA states that such letter speaks for itself. Verizon MA denies the remaining allegations contained in paragraph 17 of the Complaint.

18. Verizon MA denies that CTC continues to purchase "various network element combinations serving customers with four or more lines" from Verizon MA. Rather, CTC is now purchasing resold lines from Verizon MA. Verizon MA admits that such services are subject to the rates and surcharges stated in Verizon MA's notices to CTC. Verizon MA lacks sufficient knowledge either to admit or deny whether CTC has yet received a bill from Verizon MA at the new rates, as alleged in the final sentence of paragraph 18 of the Complaint.

19. In response to the allegations contained in paragraph 19 of the Complaint, Verizon MA states that M.G.L. c. 159, §19, speaks for itself.

20. Paragraph 20 of the Complaint consists of statements of law to which no answer is required. Nevertheless, Verizon MA denies that a carrier must "offer service indiscriminately to all customers under the rates, terms, and conditions set forth in the filed [rate] schedule," as alleged in this paragraph. In fact, as demonstrated in Part I.B. above, the Department's policy is that Verizon MA need *not* offer service under the terms of its tariff to a customer, such as CTC, whose interconnection agreement addresses that service.

21. In answer to the allegations contained in paragraph 21 of the Complaint, Verizon MA states that its letters of August 19 and September 17, 2004, speak for themselves. Verizon MA denies the implication in the final sentence of that paragraph that the rates it is charging for enterprise switching are greater than its resale rates for such services and further denies the implication in that sentence that Verizon MA is somehow prohibited from charging for its

services unless it first demonstrates to the Department that the particular fees at issue were correctly calculated.

22. Denied.

23. Paragraph 23 of the Complaint consists of statements of law to which no answer is required.

24. Denied. Further answering, Verizon MA denies that the Department has any jurisdiction or authority to approve Verizon MA's rates for enterprise switching, which Verizon MA is required to provide to CTC, if at all, solely by Section 271 of the Act. As such, enterprise switching is not subject to state tariff, filing or procedural requirements.

25. Verizon MA admits that it has not filed a tariff for its surcharges for CTC's former enterprise UNE-P arrangements but denies that any such tariff is necessary. The rates for those services are not subject to approval by the Department. Moreover, the rates which Verizon MA is currently charging for those services are equivalent to Verizon MA's resale rates for the same services, which have been approved by the Department. Thus, the Department is assured that Verizon MA's rates, were they subject to Department approval, would satisfy the Department's standards.

26. Denied.

27. In response to the first sentence of paragraph 27 of the Complaint, Verizon MA states that its letter of September 17, 2004, speaks for itself. Verizon MA denies the remaining allegations contained in that paragraph. Further answering, Verizon MA states that the rates it charges for switching and other elements pursuant to Section 271 of the Act need only be just and reasonable. Though the Department has no authority to determine whether such rates meet that standard, Verizon MA notes that the surcharges at issue here merely raise the rates for those

services to Verizon MA's resale rates, which the Department has already found to be just and reasonable.

28. Denied. Further answering, Verizon MA states that it has no obligation to provide enterprise UNE-P to CTC under its ICA or under the Tariff, and that Verizon MA has discontinued such service. Verizon MA admits that CTC has not ordered wholesale local exchange service from Verizon MA. Nor has CTC ordered any switching service from Verizon MA pursuant to Section 271 of the Act. Accordingly, Verizon MA would have been within its rights had it disconnected such arrangements on August 23, 2004. Verizon MA did not do so, however, solely as a courtesy to CTC and its customers and in the public interest in order to avoid disruption and loss of service. In such circumstances, Verizon MA is entitled to charge CTC a just and reasonable rate for those services.

29. Denied.

30. Denied. Specifically, Verizon MA denies that it has any obligation to submit its current rates for enterprise switching to the Department for approval, either before or after it begins charging such rates, or that it is required to demonstrate that such rates were developed in any particular fashion. Nevertheless, the rates that Verizon MA is now charging CTC for its former enterprise UNE-P arrangements are the same rates that Verizon MA charges for resale of comparable business services.

31. Verizon MA denies the allegations contained in paragraph 31 of the Complaint. Further answering, in response to the second sentence of that paragraph, Verizon MA states that the relationship between its resale rates and TELRIC rates is immaterial and does not indicate whether the resale rates are just and reasonable, in that, if for no other reason, TELRIC rates are themselves unreasonably low. Verizon MA also denies that CTC has correctly stated the

"applicable rate" for business UNE-P in a Boston Metro density zone central office or the full resale equivalent rate Verizon MA is charging CTC for its former enterprise UNE-P arrangements served from such an office. CTC has omitted revenues from both its resale and UNE-P revenue calculations. For resale, CTC has omitted revenues from local usage, toll usage, features, operator services, operating support systems, and daily usage files. CTC has also omitted subscriber line charge (or EUCL) revenues and switched access revenues attributable to resale lines, neither of which is subject to the wholesale avoided cost discount. For UNE-P, CTC has omitted usage revenues corresponding to unbundled switching and transport, features, operator services, operating support systems, and daily usage files. When all of these elements are properly incorporated into the calculation of resale rates, it becomes clear that the rates Verizon MA is currently charging CTC for its former enterprise UNE-P arrangements are equivalent to the rates Verizon MA would charge for the same services if ordered as resale items.

CTC's failure to include all of the rate elements for the services it receives from Verizon MA in place of enterprise UNE-P renders its allegations comparing rates contained in the third through fifth sentences of this paragraph equally false.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

CTC is estopped from obtaining any relief on the Complaint, in that CTC has willingly accepted Verizon MA's services at issue here and is obligated to pay any just and reasonable rate charged by Verizon MA for such services.

THIRD AFFIRMATIVE DEFENSE

The Department lacks jurisdiction to determine the appropriate rate for services provided by Verizon MA pursuant to Section 271 of the Act.

WHEREFORE, for the reasons set forth above, Verizon MA respectfully requests that the Department dismiss CTC's Complaint.

Respectfully submitted,

VERIZON MASSACHUSETTS

By its attorneys,

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